

2007). The appellant then applied for the subsequent promotional examinations for Administrative Analyst 2 (PS7416P), closing January 22, 2008, (PS2007P), closing January 21, 2009, and (PS5254P), closing October 21, 2009, and was found to be below the minimum requirements in experience. However, the appellant never appealed her rejection from these examinations to the Board or Civil Service Commission (Commission). Based on her rejection from multiple promotional examinations for the provisional title she held for almost four years, it appeared that her position may have been inappropriately classified. Accordingly, a classification review of the position was conducted, and on September 1, 2009 it was determined that Head Clerk was the appropriate classification for the position. It was found that the incumbent's provisional title and permanent title, Educational Planner, were inappropriate, and the appointing authority was directed to take corrective action.

Thereafter, on January 10, 2010, DLPS contacted the Commission regarding possibly generalizing the title Supervisor of General Services as DLPS believed that the appellant's duties could be classified by this title. However, it was determined that this title could not be generalized for use in other agencies because it can only be used to classify positions in State service in the Commission as it is in the Employee Relations Group (ERG) "V", Confidential Supervisory.² Additionally, by correspondence dated February 10, 2010, DLPS was again advised by this agency that the appropriate classification of the position encumbered by the appellant was Head Clerk. Therefore, DLPS was asked to act regarding the classification of her provisional position within 10 days of receipt of the letter. However, for reasons unexplained in the record, no further action was taken on this matter until June 2015, the reclassification to the appropriate title of Head Clerk was not effectuated, and DLPS did not remove the appellant from her provisional appointment as an Administrative Analyst 2.

In June 2015, Agency Services informed DLPS, in an email, that it could not ignore the 2009 classification determination and indicated that the appellant was to be removed from her provisional position as she was ineligible for multiple promotional examinations for Administrative Analyst 2. Agency Services emphasized to DLPS that the misclassification of the appellant's position has resulted in a salary overpayment issue. It was also informed that while alternative titles may have been under review, that was a separate issue, and that DLPS had to comply with the initial 2009 classification determination. DLPS was reminded that the appellant had defaulted into a salary overpayment because its failure to implement to the classification determination. In this regard, it attached a September 20, 2011 email that was sent to all State appointing authorities regarding "Classification determinations to lower title/Salary overpayment." This email advised all appointing authorities, including DLPS, that there had been an

² Titles in the "V" ERG have responsibilities or knowledge in connection with labor relations which make it inappropriate to be included in a bargaining unit.

increased number of instances where agencies failed to submit a timely action in PMIS in those cases where a classification determination finds that the appropriate classification of a position is lower than the position's current title. Agency Services indicated that this results in the employee receiving salary overpayment, for which the employee becomes responsible for paying back to the State. Further, it emphasized that this was a formal notification to all appointing authorities of the employee's responsibility for repayment. Agency Services specifically instructed that when a classification determination results in a lower title than the incumbents current permanent title:

... the submission of the action into PMIS should not be deferred even if the incumbent intends to file an appeal of the classification determination to the [Commission]. Should the employee's appeal be upheld, corrective action will be taken at such time.

In January 2016, DLPS asked Agency Services to change the experience requirements for the title Supervisor of Operations in order to attempt to utilize this title to classify the appellant's position. It is noted that these requirements did not match the appellant's duties. This request was not fulfilled, and DLPS continued to maintain the appellant provisionally in the Administrative Analyst 2 title.

In August 2017, Agency Services initiated another classification review to determine the appropriate classification for the appellant's position. Agency Services requested that DLPS provide a current list of duties for the position. Rather than submit a Position Classification Questionnaire (PCQ), on August 31, 2017, DLPS submitted a list of 24 duties. DLPS also submitted a copy of the appellant's PAR for the rating period of November 1, 2017 to October 31, 2018. On September 13, 2017, DLPS submitted to Agency Services copies of the organizational charts for the Division of Law, Administrative Services – Newark. A review of the duties submitted by the DLPS on behalf of the appellant indicates that two are generic, with no attachment to a specific task. These duties were analyzing problem areas of operations and activities and developing solutions, and resolving the merger operational and administrative problems. As the duties were not attached to a specific task, they did not provide any information regarding the classification of the position. One of the tasks was supervision, and Agency Services indicated that the position supervises a Principal Clerk and two Clerks, and reports to a Supervising Management Improvement Specialist. The remaining tasks are clerical and technical in nature. No professional tasks were indicated. In its February 9, 2018 determination, Agency Services found that the current duties and responsibilities of the appellant's position are commensurate with the title of Head Clerk and assigned an effective date of March 17, 2018.

On appeal to the Commission, the appellant argues that she has performed well in her position for 13 years, and the information from the 2009 classification

review does not accurately describe her current job duties. She claims that Agency Services did not attempt to obtain any updates from her regarding her duties. The appellant disagrees with the classification of Administrative Analyst 3³ or Head Clerk, and requests classification to the title Supervisor of General Services. Further, the appellant states that she agreed to be appointed to the non-competitive division title of Education Planner so that she could be brought into the classified service and promoted to the competitive title Administrative Analyst 2, believing that she had been appointed to perform the duties of that title. Significantly, she argues that the Commission conducted a desk audit in 2009, but no action was taken by DLPS and the Commission “disappeared for the next 8 years” and then reclassified the position based on stale information and undue reliance on supervision of clerical employees.

The appellant contends that a former incumbent of the position was an Administrative Analyst 2, and she performs the duties of the Office Manager when he is absent. She states that she is relied on to solve problems and for the relationships she has built. The appellant presents that her staff act independently, and they perform more than clerical duties, such as repairing office furniture, altering office layouts and relocating offices and cubicles. She states that, annually, she completes waivers of advertising for parking services, negotiates pricing and contracts, confirms vendor requirements, liaisons with vendors and works within budget constraints. Also, the appellant indicates that she creates purchasing requisitions, submits purchase orders to vendors, and performs receipting so vendors can be paid. Further, she is the liaison with human resources on staffing matters. The appellant emphasizes that she is not to blame for her provisional appointment, and that she cannot endure a demotion. In support of her appeal, the Newark Office Manager states that the appellant assists in managing the office in his absence, has a high level of responsibility, and ensures parking for employees. He concurs that her clerical staff perform out-of-title work performing building-related services such as those listed above.

The appointing authority also submitted information in conjunction with this matter. Specifically, it explains that the appellant responded to a job vacancy announcement for Administrative Analyst 2, was interviewed and deemed qualified for the position, and provisionally appointed in 2005. At that time, the appointing authority contends that the Administrative Analyst title series was in wide use throughout many departments and agencies to fill many types of administrative positions. However, due to concerns about both the broad use and misuse of the title, the Commission began to carefully review the positions at the time of a provisional employee applied for the required promotional examination. As such, the appointing authority states that the appellant applied for and accepted the provisional position of Administrative Analyst 2 without the knowledge that the Commission would plan a State-wide control over use of the title series. Further

³ Formerly Administrative Analyst 2.

compounding the appellant's situation is the fact that she was appointed to the non-competitive title of Education Planner, but was appointed PAP to the unrelated title of Administrative Analyst 2 without a rule relaxation.

The appointing authority also notes that the September 1, 2009 classification determination was only addressed to the appointing authority, was not copied to the appellant, nor did it provide appeal rights to the appellant. However, in response to the determination, DLPS requested generalization of the Supervisor of General Services title, and, when that could not be accommodated, requested review of the requirements for another title, Supervisor of Operations, that it believed could possibly classify the appellant's position. At that same time, DLPS states that it was communicating with Agency Services and discussing possible alternative titles to classify the appellant's position. DLPS states that it did not disagree with the determination that the appellant's position was not properly classified by Administrative Analyst 2, but questions the determination that the position is clerical in nature and that supervision of three clerical employees was the primary consideration despite the assignment of other professional level administrative duties. Therefore, as the position is responsible for ensuring the building's maintenance and operations, the appointing authority believes the position could be classified as Building Services Coordinator 2 or Building Management Services Specialist 1.

CONCLUSION

N.J.A.C. 4A:3-3.9(e) states that in classification appeals, the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

N.J.S.A. 11A:4-13(b) provides, in pertinent part, that in no case shall any provisional appointment exceed period of 12 months.

N.J.A.C. 4A:4-1.5(a)2 states that the appointing authority certifies that a provisional appointee meets the minimum qualifications for the title at the time of appointment.

N.J.A.C. 4A:10-2.1 states, in pertinent part, that where there is evidence of a violation or of noncompliance with Title 11A, New Jersey Statutes, or Title 4A, *N.J.A.C.*, the Commission may assess costs, charges and fines not to exceed \$10,000.

N.J.S.A. 11A:3-7 provides that when an employee has erroneously received a salary overpayment, the Commission may waive repayment based on a review of the case.

N.J.A.C. 4A:1-1.2(c) states that the Commission may relax a rule for good cause in order to effectuate the purposes of Title 11A, New Jersey Statutes.

The definition section of the job specification for Administrative Analyst 3 states:

Under general supervision of an Administrative Analyst 4 or other supervisor in a State department, institution, or agency, performs the review, analysis, and appraisal of current department administrative procedures, organization, and performance and helps to prepare recommendations for changes and/or revisions; does other related duties.

The definition section of the job specification for Building Services Coordinator 2 states:

Under limited supervision of a Building Services Coordinator 3 or other supervisory official in a state department, institution, or agency, supervises unit activities and the work involved in altering, renovating, repairing, and maintaining office space for the division or department in all locations throughout the state; supervises staff and work activities. Prepares and signs official performance evaluations for subordinate staff; does other related duties as required.

The definition section for the job specification for Building Management Services Specialist 2 states:

Under direction of a Building Management Services Specialist 1 or other supervisory officer in a state department, institution, or agency, completes complex analytical or professional work of considerable difficulty required to provide or support the provision of building management, operation, service, maintenance, and renovation, or supervises the operation, maintenance, and/or delivery of building services for a state building or a series of smaller buildings; does related work as required.

The definition section of the job specification for the title Head Clerk states:

Under direction of an administrative officer in a State department, agency, or institution, has charge of the development and maintenance

of clerical procedures and services of a large bureau or small division; interprets details of bureau and/or division policy as they affect clerical work of the department; sees that rules, regulations, policies, and procedures are observed as far as clerical work of the department is concerned; interprets with considerable independence the rules, regulations, policies, and procedures of the department to that portion of the public interested in or concerned with the work of the department; does other related duties as required.

At the outset, there is a sharp distinction made between a position and an incumbent. A position consists of a group of currently assigned duties and responsibilities requiring employment of one person, while an incumbent is an individual occupying a position. How well or efficiently an employee does his or her job, length of service, volume of work and qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees are classified. Thus, the knowledge, skills, and abilities of an incumbent are not factors under consideration for classification purposes as they relate to the incumbent and not to the position. Therefore, the outcome of a position classification review is not to provide a career path to the incumbent, but rather, to ensure the position is classified by the most appropriate title available within the State Classification Plan.

With respect to the appellant's arguments about the classification review of her positions, initially, classification determinations list only those duties which are the primary focus of appellant's duties and responsibilities that are performed on a regular, recurring basis. *See In the Matter of David Baldasari* (Commissioner of Personnel, decided August 22, 2006). It is long-standing policy that upon review of a request for position classification, when it is found that most of an incumbent's duties and responsibilities correspond to the examples of work found in a particular job specification, that title is deemed the appropriate title for the position. There can only be one primary focus of the position, which is determined by the importance of the task(s) and length of time needed to accomplish that objective. In this case, the September 1, 2009 classification review was conducted as an on-site position audit that included the incumbent and her direct supervisor, on June 23, 2009. While the appellant argues that the February 9, 2018 determination is based on outdated information, DLPS provided Agency Services a listing of updated duties for the position on August 31, 2017, a copy of her ePAR for the November 2017 to October 2018 rating period, and a September 2017 organizational chart. As such, the February 9, 2018 determination was in fact based on a current review of the appellant's duties. Regardless, based on its review of this updated information, Agency Services again concluded that the appropriate classification of the appellant's position is Head Clerk.

Moreover, the Commission is not persuaded by the appellant's arguments regarding the classification of the prior incumbent. The appellant's position stands on its own and is classified based on the duties she performs. The duties performed by other individuals, whether properly or improperly classified, are irrelevant in determining the proper classification of the appellant's position. It cannot be ignored that the duties of a position may change over time due to such things as attrition or addition of staff members. Accordingly, when a classification review of a position is conducted, it is done based on the duties currently assigned and being performed in that position and not those of other positions.

As to Agency Services' determination, the duties listed in the determination are a summary of duties rather than a word for word copy of what was submitted by DLPS. While the appellant stated that she was not contacted by Agency Services for an update on her duties, the appointing authority provided those duties, and the classification review was based on submitted written materials. Agency Services listed the appellant's duties in the determination, and neither the appellant nor the Newark Office Manager contested those duties. Rather they added a duty regarding parking facilities, performed once a year. While it is unclear if this one duty is professional or technical in nature, it does not elevate the position to professional-level when the majority of the duties are clerical. To that end, the primary duties for titles in the Administrative Analyst title series include being involved with the overall operational analysis of a specialized area in the organization with the direct responsibility for the recommendation, planning, or implementation of improvements for the agency as a result of such analysis. *See In the Matter of Victoria Yang-Liu* (CSC, decided April 28, 2010); *In the Matter of Maria Jacobi* (MSB, decided July 27, 2005).

The appellant does not dispute the findings regarding her primary duties and responsibilities, and agrees that Administrative Analyst 3 is not an appropriate title. However, she maintains that her duties are commensurate with the duties of Supervisor of General Services. As noted earlier, this title is in a confidential ERG, is not for general use and cannot be used to classify this position. In fact, the best fit for the submitted duties among the available titles is Head Clerk. The appellant supervises activities of clerical staff of the mail and copy room; solves problems regarding the delivery of time sensitive documents; provides logistical support such as maintaining and ordering supplies and equipment, providing mail room and delivery services, and maintaining vehicles, phones and building maintenance functions; assists in the location and relocation of staff including transferring phone lines, assigning vehicles and tracking usage and mileage, and assigning employee parking permits and overseeing train pass distribution and use; assisting the manager with support services; maintaining legal records and case files, including coordinating archiving and off-site storage; data entry of payroll; scheduling the conference room; and coordinating maintenance and building repairs with the lessor and keeping records of the requests. Based on these duties, the Education Planner,

Administrative Analyst 3, Building Services Coordinator 2, and Building Management Services Specialist 2 are not appropriate classifications for this position. Rather, as found by Agency Services, Head Clerk is the appropriate classification of the position. In so finding, consistent with Agency Services' determination, the DLPS should review its organizational structure to ensure appropriate supervisory reporting relationships and reassign staff as necessary.

At this point, the Commission must address the fact is that DLPS has allowed an incumbent who was found ineligible for four examinations for a lack of experience, to remain in a provisional position for over nine years. In this case, the appellant's dilemma began on July 9, 2005, when she was apparently inappropriately appointed to the non-competitive title Education Planner from her unclassified title of Statistician for the sole purpose of obtaining tenure in a career service title that had a similar salary to her unclassified position. The appellant's submissions in this appeal and in her appeal to the Board regarding her ineligibility for the Administrative Analyst 2 (PS1968P) suggest that she never performed the duties of an Education Planner during the four months she served in that title. Thus, the appellant's initial appointment in the Division of Law, Administrative Services appears to be premised on a misclassification. The utilization of non-competitive titles to appoint employees to positions that would not be appropriately classified by the non-competitive title is a serious circumvention of Civil Service law and rule. Moreover, the appellant's position continued to be misclassified as evidenced by her provisional experience in the Administrative Analyst 2 title not being credited as applicable experience to establish eligibility for the four promotional examinations announced against her provisional position between 2006 and 2009.

These multiple rejections resulted in the first classification review being performed in September 2009 which determined that the appellant's position should be classified as Head Clerk. Based on this background alone, at a minimum, both the appellant and the appointing authority should have been aware that there were issues concerning use of the Administrative Analyst 2 title for the appellant's position. However, instead of complying with the September 2009 classification determination, or the February 10, 2010 directive from Agency Services to act regarding the classification of the appellant's position, DLPS continued the appellant's provisional appointment as Administrative Analyst 2. It is of no moment that it was working to try to generalize or otherwise find a different title, DLPS was required to take corrective action regarding the appellant's classification in September 2009. By maintaining the appellant in a higher-level title that was determined not to be appropriate for the position, the DLPS has placed the appellant in an untenable salary overpayment situation since at least February 2010. In an email sent by Agency Services in 2015, DLPS was again reminded to remove the appellant as she is subject to salary overpayment, and it still took no action regarding this position. In the February 2018 determination, Agency

Services indicated that DLPS had 30 days to effect the required change in the classification or reassign her duties of Education Planner or a title to which she has permanent rights, and it still has taken no action.

Generally, the Commission has held that an appointing authority's failure to reclassify the appellant's position to the appropriate lower classification after a classification determination by this agency was not a basis to waive payment of salary overpayment. See *In the Matter of Jeanina Goos* (CSC, decided July 17, 2013); and *In the Matter of Susan Santiago* (CSC, decided July 31, 2013), *aff'd* on reconsideration (CSC, decided February 26, 2014). In this case, the appellant has been overpaid for nine years. DLPS was aware that the appellant was not performing the duties of her provisional title since September 2009, when the first classification review was performed and after she had been ineligible for four examinations. Nevertheless, based on DLPS' failure to abide by Agency Services' decisions regarding a lower classification, and the significant amount of time DLPS has delayed, and its failure to implement either decision, it was appropriate for Agency Services to hold the appellant harmless and set an effective date of reclassification to Head Clerk of March 17, 2018, over one month after the date of its second classification determination of February 9, 2018.

However, DLPS has again continued to ignore Agency Service's decision and continued to maintain the appellant provisionally in the title of Administrative Analyst 3 since March 17, 2018. DLPS's action in this regard are unacceptable and cannot be permitted to continue. On the other hand, it makes little sense to hold the appellant responsible for the DLPS's continued inaction. Therefore, the Commission orders that the appellant's effective date of reclassification to Head Clerk be set as August 18, 2018. See *N.J.A.C. 4A:3-3.5(c)*. As the appellant has clearly had formal notice based on the February 9, 2018 determination and in this appeal that her position is to be reclassified as Head Clerk, should the appointing authority fail to make the required change in her classification effective August 18, 2018, she will be liable for any salary overpayment she receives after that date.

The types of appointment for which exists in a Civil Service jurisdiction are clearly delineated in *N.J.S.A. 11A:4-13*, and include regular, provisional, temporary, emergency, senior executive service and unclassified appointments. Permanent status in a competitive title is achieved by passing an examination, regular appointment from an eligible list, and completion of a working test period. See *N.J.S.A. 11A:4-1, et seq.* The appellant has no underlying permanent status in a related competitive title, since prior to her provisional position, she was regularly appointed in an inappropriate non-competitive title, Education Planner. Normally, under these circumstances, the provisional incumbent would receive a provisional appointment pending open-competitive examination (PAOC). See *N.J.A.C. 4A:4-1.5*. However, a PAOC is not appropriate in this situation as her position was reclassified as a result of a classification review of her position. See *N.J.A.C. 4A:4-*

1.1(c)3. Therefore, the appellant should be provided a provisional appointment pending a qualifying examination (PAQ) to Head Clerk effective August 18, 2018.

Finally, the Commission has specifically been given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000 for non-compliance or violation of Civil Service laws or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3 (App. Div. 1989).* In this case, the Commission is disturbed by DLPS's egregious non-compliance with the procedural requirements of position classification and orders it to comply with this order as well as all Civil Service law and rules. In the event the appointing authority fails to make a good faith effort to fully comply and effect the proper position classification by August 18, 2018, it is ordered that a fine be assessed in the amount of \$10,000, to be remitted within 30 days of August 18, 2018.

Accordingly, a thorough review of the entire record fails to establish that Roxanne Fattori has presented a sufficient basis to warrant a Supervisor of General Services classification of her position.

ORDER

Therefore, it is ordered that this appeal be denied. It is further ordered that the position be classified as Head Clerk, effective August 18, 2018 and Roxanne Fattori receive a provisional appointment, pending a qualifying examination, effective August 18, 2018. Finally, if DLPS fails to comply with this order, within 30 days of August 18, 2018, the Commission orders that DLPS be assessed a \$10,000 fine, to be remitted within 30 days of August 18, 2018.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18th DAY OF JULY, 2018



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